

May 18, 1942

Box 6
Folder 6
Item 10
P. 1

ASW 014311 General

CONSTITUTIONALITY OF EVACUATION OF CITIZENS DURING WARSUMMARY

The power to order the evacuation of citizens during war is derived from the combined war powers of Congress and the President. The so-called war power of Congress has its source in the constitutional provision that Congress has power "to declare war", while the President's war power is a concomitant of his designation as Commander-in-Chief of the armed forces.

The war powers of the government have frequently been referred to as unlimited. Anything less would mean that the Constitution itself limited the power of the proper authorities to carry on a war for the preservation of the nation. The Supreme Court has sustained the power of the government to confiscate property and, through the activities of military commanders, to destroy any property if it seems expedient for the successful prosecution of war. Citizens may be conscripted to serve in the armed forces at home or abroad. This power must include the power to require a citizen to leave his place of abode and go to another part of the country.

During the Civil War an individual citizen accused of sympathy with the enemy was tried and convicted by military authorities. A writ of habeas corpus was denied by a federal Circuit Court. Ex parte Vallandigham, Fed. Cas. No. 16,816 (28 Fed. Cas. 874) (SD Ohio). Later the President ordered Vallandigham sent across the Union lines. In Ex parte Milligan the Supreme Court indicated that the war power was strictly limited to areas where a real war emergency exists. However, that case would probably not restrict the power to exclude in areas considered vital by a military commander, especially in these days when invasion can occur anywhere with

5-18-42

Box 6
Folder 6
Item 10
P. 2

-2-

lightning speed.

A citizen ordered by a military commander to evacuate from a designated area would probably have no right to a writ of habeas corpus unless actually restrained and imprisoned by the authorities. If he failed to obey the order, he would violate an act of Congress, Public Law 503, 77th Congress, 1st Session, and be subject to prosecution in the usual course. He would then have violated an act clearly within the war power of Congress, and the constitutionality of prosecution would be clear. The only inquiry in such a proceeding in the Federal Court would be to determine whether the military commander's decision to issue the exclusion order was reached in an orderly and regular manner and whether the defendant had violated such order.